

Defendants' request regarding a pre-discovery, reasonably particular identification of Plaintiff's trade secret claims.

B. Proposed Pretrial Schedule [Disputed]

1. Plaintiff's Proposed Pretrial Schedule

Plaintiff proposes the following pretrial schedule:

<u>EVENT</u>	<u>DATE</u>
Deadline for Initial Disclosures	November 13, 2014
Deadline for Amendment of Pleadings (without leave of Court)	December 29, 2014
Deadline to Complete Fact Discovery	February 29, 2016
Deadline to Make Rule 26(a)(2)(A) & (B) Expert Disclosures (on issues on which the disclosing party has the burden of proof)	March 21, 2016
Deadline to Make Rule 26(a)(2)(A) & (B) Rebuttal Expert Disclosures (on issues on which the disclosing party does not have the burden of proof)	April 18, 2016
Deadline to Complete Expert Discovery	May 13, 2016
Deadline to File Dispositive Motions	May 31, 2016
Deadline to File Oppositions to Dispositive Motions	June 20, 2016
Hearing on Dispositive Motions	July 11, 2016
Final Pretrial Conference	August 8, 2016
Trial	August 22, 2016

2. Defendants' Proposed Pretrial Schedule

<u>EVENT</u>	<u>DATE</u>
Deadline for Initial Disclosures	November 3, 2014
Plaintiff to Serve Reasonably Particular Identification of Trade Secret Claims	November 13, 2014
Deadline for Amendment of Pleadings (without leave of Court)	January 30, 2015
Deadline to Complete Fact Discovery	June 30, 2015
Deadline to Make Rule 26(a)(2)(A) & (B) Expert Disclosures (on issues on which the disclosing party has the burden of proof)	July 31, 2015
Deadline to Make Rule 26(a)(2)(A) & (B) Rebuttal Expert Disclosures (on issues on which the disclosing party does not have	August 31, 2015

the burden of proof)	
Deadline to Complete Expert Discovery	September 30, 2015
Deadline to File Dispositive Motions	October 31, 2015
Deadline to File Oppositions to Dispositive Motions	December 4, 2015
Hearing on Dispositive Motions	At Court's discretion in early 2016
Final Pretrial Conference	Early 2016
Trial	Early 2016

C. Defendants' Request for Pre-Discovery Identification of Trade Secret Claims (Disputed)

1. Defendants' Position

In cases alleging misappropriation of trade secrets, federal courts here and around the country generally require the plaintiff, before serving discovery, to provide a reasonably particular identification of each asserted trade secret claim to the defendant. Courts do so under Rule 16, and a host of district courts have applied the rule in a practice that is emerging as the national consensus in cases alleging misappropriation of trade secrets. *See Content Mgmt. Assoc. v. FMR LLC*, Civil Action No. 10-11364-GAO, 2012 U.S. Dist. LEXIS 17320 (D. Mass. Feb. 13, 2012) (“The plaintiff here must identify with reasonable particularity the trade secrets that may have been misappropriated before its entitled to compel discovery for its trade secret claims.”). The purpose is to permit more focused discovery and allow the defendant fair notice of the specific information it is accused of misappropriating so that it can prepare specific defenses. Here, where Plaintiff alleges that Defendants published the alleged trade secrets in a publicly-available patent, identifying the trade secret claims in a pre-discovery list poses no issues.

Defendants propose that Plaintiff serve this statement on November 13, 2014. In the alternative, if the Court would prefer to consider full briefing on this issue in order to review the many cases around the country adopting this practice, Defendants propose that its opening brief be due on November 13, 2014, that Plaintiff's opposition be due on December 2, 2014, that

Defendants' reply be due (with leave of Court) on December 9, 2014, and that the Court set a hearing at its discretion.

2. Plaintiff's Position

Defendants now propose a cumbersome procedure that inhibits discovery and that does not exist under Massachusetts law. Plaintiff is confident that Defendants will propound an interrogatory that asks Plaintiff to identify its trade secrets; Defendants' proposed procedure will add nothing to their ability to learn Plaintiff's position or the facts upon which Plaintiff will rely in this case.

Instead, through their proposed new procedure, Defendants seek to delay their obligation to respond to Plaintiff's discovery, until Plaintiff has identified its trade secrets at issue at a level of detail that Defendants themselves concede is sufficient. Plaintiff respectfully submits that this Court should deny Defendants' request and simply advise the parties to follow the law that is already in place: the Federal Rules of Civil Procedure and substantive Massachusetts law.

D. Assignment to Magistrate Judge

The parties respectfully decline to consent to trial of this case by magistrate judge.

E. Other Matters

On October 14, 2014, Defendants sent Plaintiff a draft protective order for the treatment of information designated as confidential, as well as a protocol governing production of electronically stored information (ESI). Defendants are presently awaiting comments on these documents. Until a protective order is formally entered, the parties agree to treat all confidential discovery responses and document production received from a party-opponent as "attorneys' eyes only," subject to agreements set forth in the final protective order. The parties have stipulated to an agreement for PDF email service of materials not required to be filed through the Court's ECF system.

F. LR 16.1(d)(3) Certifications

The undersigned certify that each has consulted with his respective clients concerning litigation budgets and alternative dispute resolution, as required by LR 16.1(d)(3).

Respectfully submitted this 27th day of October, 2014.

CARDIAQ VALVE TECHNOLOGIES, INC.

NEOVASC INC. and NEOVASC TIARA INC.

By its attorneys,

By their attorneys,

/s/ John W. Holcomb

Randall T. Weeks, Jr. (BBO#630326)
Timothy D. Wenger (BBO#674087)
PARTRIDGE SNOW & HAHN, LLP
128 Union Street, Suite 500
New Bedford, MA 02740
(774) 206-8200
rtw@psh.com
tdw@psh.com

John B. Sganga, Jr. (admitted *pro hac vice*)
John W. Holcomb (admitted *pro hac vice*)
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404
john.sganga@knobbe.com
john.holcomb@knobbe.com

Vito A. Canuso III (admitted *pro hac vice*)
9582 Featherhill Drive
Villa Park, CA 92861
(714) 941-0579
vito@canuso.com

/s/ Charles T. Graves (with permission)

Michael L. Chinitz
Meredith Doty
ROSE, CHINITZ & ROSE
One Beacon Street, 23rd Floor
Boston, MA 02108
617-536-0040
mlc@rose-law.net

Gerard D. O'Shea
State Bar of Massachusetts No. 660236
WILSON SONSINI GOODRICH & ROSATI, P.C.
1301 Avenue of the Americas, 40th Floor
New York, NY 10019-6022
Phone: 212-999-5800
Fax: 212-999-5899

Douglas H. Carsten (*pro hac vice*)
Peter S. Kang (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI, P.C.
12235 El Camino Real, Suite 200
San Diego, CA 92130
Phone: 858-350-2305
Fax: 858-350-2399
Email: dcarsten@wsgr.com
Email: pkang@wsgr.com

Charles T. Graves (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI, P.C.
One Market Plaza

Spear Tower, Suite 3300
San Francisco, CA 94105
Phone: 415-947-2109
Fax: 415-947-2099
Email: tgraves@wsgr.com

Shaun R. Snader (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI,
P.C.
1700 K Street, NW, Fifth Floor
Washington, DC 20006
Phone: 202-973-8800
Fax: 202-973-8899
E-mail: ssnader@wsgr.com

*Attorneys for Defendants Neovasc Inc.
and Neovasc Tiara Inc.*

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on the 27th day of October, 2014.

/s/ John W. Holcomb
John W. Holcomb (admitted *pro hac vice*)

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